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Attorneys for Defendants County of San Diego, Patrick Lopatosky
and Brian Butcher

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

MOHAMAD ALI SAID, an individual,	)	No. 12-cv-2437-GPC(RBB)
Plaintiff,)	
v.	)	NOTICE OF MOTION AND MOTION
COUNTY OF SAN DIEGO; DEPUTY	)	MOTION FOR PARTIAL SUMMARY
SHERIFF PATRICK LOPATOSKY;	)	JUDGMENT ON BEHALF OF
DEPUTY SHERIFF BRIAN BUTCHER;	)	DEFENDANTS COUNTY OF SAN
DEPUTY SHERIFF LEE SCOTT; and	)	DIEGO, PATRICK LOPATOSKY, AND
DOES 1 - 50, inclusive,	)	BRIAN BUTCHER
Defendants.	)	Date: April 10, 2015
	)	Time: 1:30 PM
	)	Dept.: 2D - Courtroom of the
	)	Honorable Gonzalo P. Curiel
	)	Trial Date: TBD

TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on April 10, 2015 at 1:30p.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Gonzalo P. Curiel, United States District Judge, located at 221 West Broadway San Diego, California 92101, Defendants County of San Diego, Patrick Lopatosky and Brian Butcher will move this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for partial summary judgment on the following grounds:

1. Plaintiff has no evidence to support a claim against the County of San Diego for violation of 42. U.S.C. § 1983 ("§ 1983"). In particular, Plaintiff has no evidence that an "action pursuant to official municipal policy" or a failure to train amounting to

No. 12-cv-2437-GPC(RBB)

1 deliberate indifference to individuals' constitutional rights was the "moving force"
2 behind his alleged injury.

3 2. Plaintiff cannot prevail on his § 1983 claim against Deputies Butcher and
4 Lopatosky based on unlawful arrest or his corresponding state law claim for false arrest
5 because he was arrested pursuant to probable cause. Additionally, Deputies Butcher and
6 Lopatosky are entitled to qualified immunity as to Plaintiff's § 1983 claim based on
7 unlawful arrest.

8 3. Plaintiff cannot prevail on his § 1983 claim against Deputies Butcher and
9 Lopatosky based on inadequate medical care because he cannot establish the Deputies
10 were deliberately indifferent to his serious medical needs. Rather, the undisputed
11 evidence demonstrates that the Deputies immediately summoned the necessary medical
12 assistance. Additionally, Deputies Butcher and Lopatosky are entitled to qualified
13 immunity as to this claim.

14 4. Plaintiff cannot prevail on his § 1983 claim against Deputies Butcher and
15 Lopatosky based on malicious prosecution because there was, at a minimum, probable
16 cause to arrest Plaintiff for violation of the protective order held by his wife.
17 Additionally, Plaintiff has no evidence that the prosecution was initiated with malice or
18 that either Deputy Lopatosky or Deputy Butcher took any action to compromise the
19 prosecutor's independent judgment, and thus he has no evidence to overcome the
20 presumption set forth in *Smiddy v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981).

21 5. Plaintiff cannot prevail on his claim for violation of California Civil Code §
22 52.1 because, the undisputed facts demonstrate that Plaintiff can prove no constitutional
23 violation based on unlawful arrest, inadequate medical care, or malicious prosecution,
24 and the only other constitutional violation Plaintiff alleges – excessive force—cannot in
25 and of itself, also comprise an alleged constitutional interference that gives rise to
26 liability under § 52.1. The alleged conduct must be shown to have been committed for
27 the purpose of interfering with some other constitutional right.

28 This motion is based upon this notice of motion and motion, the accompanying

1 memorandum of points and authorities, the accompanying separate statement of
2 undisputed material facts and the evidence in support thereof, the declarations of
3 Stephanie Karnavas, Hanan Harb, Patrick Lopatosky, and Brian Butcher, and the exhibits
4 thereto, the request for judicial notice submitted herewith and the exhibits thereto, and on
5 all pleadings and papers on file in this action, and upon such other matters as may be
6 presented to the Court at the time of the hearing.

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8 DATED: February 23, 2015 THOMAS E. MONTGOMERY, County Counsel

9 By: s/ STEPHANIE KARNAVAS, Senior Deputy
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